



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146524

PRELIMINARY RECITALS

Pursuant to a petition filed January 09, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability now known as the Office of Inspector General (OIG) in regard to Medical Assistance (MA), a hearing was held on February 19, 2013, at Port Washington, Wisconsin. The record was held open to allow for the submittal of additional information from the petitioner, which was received, and forwarded to the OIG for further review. That review occurred and the OIG issued a letter on April 19, 2013 to the petitioner explaining that it was still upholding the denial of the request for prior authorization.

The issue for determination is whether the OIG properly denied petitioner's request for prior authorization of a continuous passive motion (CPM) device.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By written submittal of: Pam Hoffman, PT, DPT, MS
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Ozaukee County.
2. On December 5, 2012 Kinex Medical Company filed a prior authorization (PA) request for petitioner to receive a CPM device.
3. On December 17, 2012 the OIG denied the PA request because the evidence submitted did not show the medical necessity of the device.

DISCUSSION

Wisconsin's MA program provides payment for a variety of covered services to state residents. Certain services require PA from the Department of Health Services (DHS) before payment can be made to the health care provider furnishing those services. See Wis. Admin. Code §HFS 107.02(3)(a).

DHS has promulgated a detailed set of rules describing the services and procedures for which the state MA program will pay. See Wis. Admin. Code Ch. HFS 107. Departmental rules also describe the services and procedures that require PA and the material that must be submitted in support of a PA request. In particular, Wis. Admin. Code §107.02(3)(d) provides,

A request for prior authorization submitted to the department or its fiscal agent shall, unless otherwise specified in chs. HFS 101 to 108, identify at a minimum:

1. The name, address and MA number of the recipient for whom the service or item is requested;
2. The name and provider number of the provider who will perform the service requested;
3. The person or provider requesting prior authorization;
4. The attending physician's or dentist's diagnosis including, where applicable, the degree of impairment;
5. A description of the service being requested, including the procedure code, the amount of time involved, and dollar amount where appropriate; and
6. Justification for the provision of the service.

Almost without exception, an applicant will need to demonstrate that the procedure for which he or she seeks approval is "medically necessary." See Wis. Admin. Code §HFS 107.03(3)(e). Thus, an explanation as to why the requested procedure or device is medically necessary should be a major focus of any PA request. Department regulations define "medically necessary" as follows:

[A] medical assistance service under ch. HFS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;

4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §HFS 101.03(96m). Thus, DHS needs enough information in the PA request to allow it to make its determination of medical necessity.

The PA filed in this case was a relatively bare-bones affair, stating that petitioner had an ACL tear but described nothing of his physical status. The DHS reviewer put the issue very cogently:

But not all physicians order CPM post-operatively to treat discomfort and ROM deficits, suggesting CPM is not always necessary status post orthopedic surgeries. It can also be assumed not all patients have the same degree of limited ROM and comfort post-operatively and, consequently, treatment would depend upon the degree of limitation or discomfort. For these reasons, when CPM is ordered by the physician, there needs to be a medically necessary reason to provide *that* treatment at *that* time for *that* member, to be reimbursable by ForwardHealth.

Exhibit 1. Taken by itself, the initial PA request did not provide any data that would allow a reviewer to evaluate the appropriateness of prescribing the use of a CPM device to petitioner at this particular time.

At hearing, petitioner's mother expressed her frustration in working with this provider and her attempts to get the information necessary for PA approval. She was able to retrieve a volume of medical records regarding her son's surgery and this was provided back to the OIG for a second review. Unfortunately, it still does not provide the petitioner's post-operative range of motion limitations as required to determine the medical necessity. She was essentially at the mercy of the *provider*, who is required to justify the requested services, but it was either unable or unwilling to do so.

Based upon my review of the record in this case, I must agree with the OIG's decision to deny the PA. The basic assertion of the OIG has been the lack of evidence that would justify the medical need for the CPM device. I agree that that information has not been presented. Therefore, I must conclude the denial was correct.

I also remind the petitioner that if a provider does not inform a recipient that a procedure or service requires prior authorization, and performs the service before submitting a prior authorization request or receiving an approval, and then submits a claim for services rendered which is rejected, the recipient may not be held liable. This is stated in the Wisconsin Administrative Code as follows:

When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Wis. Adm. Code §DHS 104.01(12)(c).

CONCLUSIONS OF LAW

The OIG properly denied petitioner's request for prior authorization of a CPM device.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

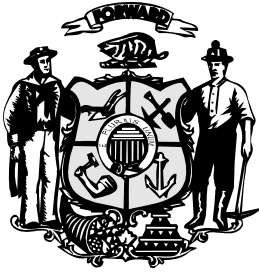
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of April, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 30, 2013.

Division of Health Care Access And Accountability